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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ACADEMY OF MOTION PICTURE
ARTS AND SCIENCES, a California
nonprofit corporation,

Plaintiff,

v.

GODADDY.COM, INC., a Delaware
corporation; THE GODADDY GROUP
INC.; a Delaware Corporation;
DOMAINS BY PROXY, INC., a
Delaware Corporation;
GREENDOMAINMARKET.COM, an
unknown entity; BDS, an unknown
entity; and XPDREAMTEAM LLC, a
California limited liability corporation,

Defendants.

Case No. 5:12-mc-80192-EJD

Underlying Civil Action Pending in
U.S. District Court for the Central
District of California, Case No. 2:10-cv-
03738-ABC-CW

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION TO
COMPEL DEPOSITION 30(B)(6)
TESTIMONY FROM NON-PARTY
GOOGLE, INC.**

Hearing

DATE: October 2, 2012

TIME: 10:00 a.m.

CTRM: 5, San Jose Courthouse

Honorable Paul S. Grewal

**TO DEFENDANTS, NON-PARTY GOOGLE, INC., AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on October 2, 2012 at 10:00am, or as soon thereafter as the matter may be heard in Courtroom 5, in the United States District Court for the Northern District of California located at 280 South 1st Street, San Jose, CA 95113, Plaintiff Academy of Motion Picture Arts and Sciences, Inc. (“AMPAS” or “Plaintiff”) will and hereby does move this Court pursuant to Federal Rule of Civil Procedure Rule 45, for an order compelling Google, Inc. to comply with the deposition subpoena issued from this Court and appear to provide deposition testimony on the topics specified in Plaintiff’s Notice of 30(b)(6) Deposition of Google, Inc.

This Motion is made pursuant to Federal Rules of Civil Procedure Rules 45, 37, and 30. This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of Enoch Liang, all pleadings and papers on file herein, and upon such oral and documentary evidence as may be presented at or before the hearing on this Motion.

This Motion is made after the conference of counsel, pursuant to Northern District Local Rule 37-1. Plaintiff conferred in good faith with Google several times in an effort to obtain the discovery below without Court intervention. *See* Declaration of Enoch Liang (“Liang Decl.”), ¶¶6-10. Indeed, the reason that Plaintiff waited until now to bring this motion to compel is that Plaintiff attempted to exhaust all other avenues of discovery—including from Defendant GoDaddy—until bringing this motion to compel. *Id.*, ¶11. The fact discovery cut-off in the underlying action is September 25, 2012, necessitating this motion now.

I. RELIEF REQUESTED

The relief sought by Plaintiff Academy of Motion Picture Arts and Sciences (“Plaintiff” or “AMPAS”) via this motion includes the following:

An Order compelling Google to appear for the FRCP 30(b)(6) deposition commanded by subpoena properly served on April 26, 2011.

On June 27, 2012, Defendant GoDaddy.com, Inc. also served a deposition subpoena on Google, demanding documents and a deposition on July 30, 2012. Google did not appear for deposition in response to that subpoena either. On August 22, 2012, GoDaddy moved to compel against Google, and was assigned this Case No. 5:12-mc-80192-EJD. For the convenience of the Court, Plaintiff is using the same miscellaneous case number and hearing date as GoDaddy.

For the convenience of non-party Google, Plaintiff also requests that its deposition of Google be set on the same day or the day before GoDaddy’s deposition of Google.

II. STATEMENT OF ISSUES TO BE DECIDED

The issues to be decided are:

Whether Google must provide 30(b)(6) witness(es) for testimony regarding the topics identified in the April 26, 2011 subpoena properly served by the Plaintiff on Google.

III. CIVIL LOCAL RULE 37-2 STATEMENT

Civil L.R. 37-2 requires Plaintiff to set forth each request in full, followed immediately by the objections and/or responses thereto. Because Google did not provide specific objections and responses to each deposition topic, Plaintiff first sets forth each deposition topic, followed by Google’s general objections and responses.¹

¹ During the meet and confer process, Plaintiff and Google discussed additional

A. Plaintiff's Verbatim 30(b)(6) Deposition Topics

1. Any discussions and/or negotiations between GODADDY and GOOGLE about GODADDY'S PARKED PAGE PROGRAMS, including, but not limited to any discussions and/or negotiations about the use of ADSENSE in GODADDY'S PARKED PAGE PROGRAM.
2. Any discussions or communications between GOOGLE and GODADDY referring or relating to the PATENT APPLICATION or any other methods or processes to prevent trademark infringement in the ADSENSE program.
3. Any discussions or communications between GOOGLE and GODADDY referring or relating to the GODADDY AGREEMENT.
4. Any discussions or communications between GOOGLE and GODADDY referring or relating to domain names that incorporate third party trademarks and are placed in GODADDY'S PARKED PAGE PROGRAM.
5. Whether and to what extent GOOGLE has knowledge that domain names in the ADSENSE program, GODADDY'S PARKED PAGE PROGRAM, or similar page parking programs may or do incorporate third party trademarks.
6. Whether and to what extent GOOGLE marketed or promoted ADSENSE in connection with GODADDY'S PARKED PAGE PROGRAMS.

specific topics in detail. Those are discussed further in the accompanying memorandum of points and authorities.

- 1 7. The process or method by which advertisements and sponsored links are
2 selected and placed on domain names within GODADDY'S PARKED
3 PAGE PROGRAMS, including domain names incorporating the term
4 "OSCAR," "OSCARS," "ACADEMY AWARD," or "ACADEMY
5 AWARDS."
- 6
- 7 8. The amount of annual revenue that GOOGLE has shared with GODADDY
8 in connection with GODADDY'S PARKED PAGE PROGRAMS for the
9 years 2005, 2006, 2007, 2008, 2009, and 2010.
- 10
- 11 9. The authenticity of all DOCUMENTS produced pursuant to the Subpoena
12 To Produce Documents, Information, Or Objects served concurrently
13 herewith on GOOGLE by The Academy of Motion Picture Arts and
14 Sciences.
- 15

16 **B. Google's Verbatim General Responses and Objections**

- 17 1. Google objects to the subpoena to appear for a deposition on the grounds
18 that it imposes an undue burden on Google, a non-party, to appear as a
19 witness. Google also objects to the subpoena to appear for a deposition on
20 the grounds that the information sought can be obtained through less
21 burdensome means, including from the parties to the case.
- 22
- 23 2. Google objects to the subpoena to appear for a deposition on the grounds it
24 is vague, overbroad, duplicative, cumulative, unduly burdensome, and
25 oppressive. Google objects to the subpoena to appear for a deposition to the
26 extent that the subpoena is abusively drawn and served for the purpose of
27 annoying and harassing Google, a non-party.
- 28

- 1 3. Google objects to the Topics to the extent they seek testimony that has been,
2 or could be, obtained from any of the parties to the underlying litigation or
3 by less burdensome means.
4
- 5 4. Google objects to the Topics on the ground that they impose an undue
6 burden and demand that Google, a non-party, appear as a witness at its own
7 expense. To the extent that Google appears as a witness pursuant to the
8 subpoena, Google shall only do so upon compensation for costs, including
9 attorney fees, related to the deposition.
10
- 11 5. Google objects to the Topics to the that any Stipulated Protective Order
12 entered in the case does not provide sufficient protection for the information
13 sought from Google.
14
- 15 6. Google objects to the Topics to the extent they seek testimony protected
16 from disclosure by the attorney-client privilege, the work product doctrine,
17 or any other applicable privilege or immunity. To the extent that Google
18 testifies in response to the Topics, Google will not testify as to anything
19 protected by such privileges or immunities, and any inadvertent disclosure
20 shall not be deemed to constitute a waiver of any such privilege or
21 immunity.
22
- 23 7. Google objects to the Topics to the extent they seek information that is not
24 within Google's knowledge.
25
- 26 8. Google objects to the Topics to the extent that they vague, overbroad or
27 unduly burdensome.
28

1 9. Google objects to the Topics to the extent that they call for testimony that is
2 neither relevant to the subject matter of this action nor reasonably calculated
3 to lead to the discovery of admissible evidence.

4

5 10. Google objects to the topics to the extent that it seek testimony or impose
6 obligations beyond what is permissible under Federal Rules of Civil
7 Procedure or any applicable local rules.

8

9 11. Google objects to the Topics to the extent they seek testimony concerning a
10 large range of topics in only a short time frame for providing the testimony.
11 To the extent that Google appears as a witness pursuant to the subpoena,
12 Google shall do so at a mutually agreeable time and place.

13

14 12. Google objects to the Topics to the extent they seek disclosure of private
15 information.

16

17 13. Google objects to the Topics to the extent they seek disclosure of
18 information that is otherwise prohibited by law.

19

20 Google requests the opportunity to meet and confer to determine the scope and
21 applicability of the above objections.

22

23 Google objects to the requests in the subpoena to the extent they seek
24 information already in Plaintiff's possession or available to Plaintiff from some
25 other source that is more convenient, less burdensome or less expensive,
26 including information available to plaintiff from public sources. This means
27 that if you are seeking account or other information from Google that is equally
28 available from a party in the litigation, Google objects to that request on that

1 basis. Google also objects to the requests to the extent they seek information
2 containing confidential financial, proprietary or trade secret information, or any
3 information subject to a confidentiality agreement or protective order. While
4 Google does not require a protective order for production of its non-confidential
5 information, Google will only produce information it deems confidential
6 pursuant to a confidentiality agreement or protective order that it deems suitable
7 for the protection of its confidential information. Please provide a
8 confidentiality agreement or protective order if you intend to seek confidential
9 documents of Google in your requests, as we will not produce confidential
10 information without entry of a protective order that we deem suitable to protect
11 the confidentiality of our documents.

12
13 Google further objects to the requests to the extent they seek information
14 protected by any privilege, including the attorney-client privilege, work product
15 immunity doctrine, common interest privilege, or any other applicable
16 privilege, immunity, or restriction on discovery. We also object to the requests
17 to the extent that they are irrelevant, overly broad, vague, ambiguous, unlimited
18 in time or scope, fail to identify the information sought with reasonable
19 particularity, or impose an undue burden on Google, Google objects to the
20 requests to the extent that they seek information that is not relevant or
21 reasonably likely to lead to the discovery of admissible evidence. Google
22 objects to the request to the extent that they seek private information. Google
23 also objects to the requests to the extent that they seek production of documents
24 that is otherwise prohibited by law.

25 DATED: August 27, 2012

By: /s/ Enoch Liang

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